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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/651,431	08/30/2000	Wolfgang Streubel	BO-107	2577

7590

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EXAMINER

WILKINS III, HARRY D

ART UNIT

PAPER NUMBER

1742

17

DATE MAILED: 08/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/651,431

Applicant(s)

STREUBEL ET AL.

Examiner

Harry D Wilkins, III

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,6,7,9,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,7,9,12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 21 June 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1, 3, 6, 7, 9, 12 and 13 are pending.

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 May 2002 has been entered.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toepker et al (EP 0 752332 A1) in view of Metals Handbook Volume 1 and ASM Handbook Volume 5.

Toepker et al teach (see English abstract and figs. 1-5) a transverse support for a twist beam rear axle with a centrally located U-shaped cross section formed from a tube. From figures 1-5 it would have been obvious to one of ordinary skill in the art that the twist beam rear axle transverse support was bending-resistant and torsionally yielding.

Toepker et al do not expressly disclose any processing method by which the support is made. It has been well known in the art to form tubular profiled members by cold forming techniques, such as press forming. Therefore, it would have been within the expected skill of a routineer in the art to have used conventional cold forming techniques, such as press forming, in order to manufacture a tubular profiled member with a torsionally yielding central longitudinal section of a U-shaped cross-section and with opposed torsion-proof end sections as seen in figures 1-5 of Toepker et al. One of ordinary skill in the art would have expected the method to include a further step of configuration processing for completing a twist beam rear axle. The method does not include the steps of annealing, hardening, tempering and outer surface hardening.

The Metals Handbook Volume 1 teaches (see page 241) that hot-rolled medium-carbon steels (i.e.-tempering steel) are generally subjected to a standard heat treatment. The heat treatment involves annealing at a suitable temperature, hardening by quenching in a suitable medium, such as water, and finally tempering at a temperature below the critical range to produce a desired hardness.

Though no specific temperature and time for the annealing, hardening and tempering steps are disclosed, it would have been within the expected skill of a routineer in the art to have selected and optimized the known result effective variables of annealing time and temperature, quenching start temperature, and tempering time and temperature.

The ASM Handbook Volume 5 teaches (see pages 708-709) that shot peening can be applied to the surface of carbon steels in order to reduce fatigue failures in parts subjected to cyclic loading, such as an axle.

The Metals Handbook teaches (see page 151) that a standard carbon steel is SAE-AISI 1524 (and 15B24) (which is equivalent to 22MnB5). Therefore, it would have been obvious to one of ordinary skill in the art to have selected the conventional steel for use in a twist beam rear axle.

Therefore, it would have been obvious to one of ordinary skill in the art to have applied the conventional annealing, hardening and tempering heat treatment to the conventional 22MnB5 steel (AISI 15B24), as taught by the Metals Handbook Volume 1, and the conventional shot peening surface treatment, as taught by the ASM Handbook Volume 5, to the twist beam rear axle of Toepker et al because the Metals Handbook Volume 1 teaches that the heat treatment is applied to produce desired hardness and microstructure in a final product and the ASM Handbook Volume 5 teaches that shot peening reduces fatigue failures in parts subjected to cyclic loading.

It would have been within the expected skill of a routineer in the art to apply the annealing step as taught by the Metals Handbook to only the sections of the support where the desired hardness and microstructure were required.

Regarding claim 3, it would have been within the expected skill of a routineer in the art to have optimized the known result effective variable of annealing temperature in the process taught by the Metals Handbook.

Regarding claims 6 and 7, the ASM Handbook Volume 5 teaches that shot peening can be applied to carbon steels. Therefore, it would have been obvious to one of ordinary skill in the art to carry out the surface hardening by the conventional method of bombardment with steel balls (i.e.-shot peening).

5. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toepker et al (EP 0 752332 A1) in view of the ASM Handbook Volumes 4 and 5.

Toepker et al teach (see English abstract and figs. 1-5) a transverse support for a twist beam rear axle with a centrally located U-shaped cross section formed from a tube. From figures 1-5 it would have been obvious to one of ordinary skill in the art that the twist beam rear axle transverse support was bending-resistant and torsionally yielding.

Toepker et al do not expressly disclose any processing method by which the support is made. It has been well known in the art to form tubular profiled members by cold forming techniques, such as press forming. Therefore, it would have been within the expected skill of a routineer in the art to have used conventional cold forming techniques, such as press forming, in order to manufacture a tubular profiled member with a torsionally yielding central longitudinal section of a U-shaped cross-section and with opposed torsion-proof end sections as seen in figures 1-5 of Toepker et al. One of ordinary skill in the art would have expected the method to include a further step of configuration processing for completing a twist beam rear axle. The method does not include the steps of case-hardening and outer surface hardening.

It would have been obvious to one of ordinary skill in the art to have selected the conventional C15 (ASTM A 576) steel because it has specific mechanical property requirements which are desirable for a twist beam rear axle.

The ASM Handbook Volume 5 teaches (see pages 948-949) that case-hardening is a conventional process and that carburizing and quenching are performed to enable surface hardening.

The ASM Handbook Volume 4 teaches (see page 371) that shot peening is applied to case hardened steel in order to increase surface compressive residual stresses. This process has the effect of improving bending fatigue performance.

Therefore, it would have been obvious to one of ordinary skill in the art to have applied case-hardening and shot peening, as taught by the ASM Handbook Volumes 4 and 5, to the conventional C15 steel because the case-hardening increases the hardness of the surface of the steel and the shot peening improves bending fatigue performance.

It would have been within the expected skill of a routineer in the art to apply the case-hardening step as taught by the ASM Handbook to only the sections of the support where the desired surface hardening was required.

Regarding claims 12-13, the ASM Handbook Volume 4 teaches applying the surface hardening as shot peening. Therefore, it would have been obvious to one of ordinary skill in the art to carry out the surface hardening by the conventional method of bombardment with steel balls (i.e.-shot peening).

***Response to Arguments***

6. Applicant's arguments filed 16 May 2002 have been fully considered but they are not persuasive. Applicant has argued that only with targeted temperature ranges and time values, as claimed, can the special course of stiffness ensuring a harmonic transition be obtained.

In response to Applicant's argument, the assertion that new and unexpected results are obtained by the present process are unsupported by comparison data. Unexpected results must be established by factual evidence. Mere argument or conclusory statements in the specification does not suffice. *In re De Blauwe*, 736 F. 2<sup>nd</sup> 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1884). The metallurgical processing steps of the present invention are well known in the art, and Applicant has not shown that the claimed process produces unexpected results in the ability to operate as a transverse support of a twist beam rear axle for a passenger car.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry D Wilkins, III whose telephone number is 703-305-9927. The examiner can normally be reached on M-Th 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy V King can be reached on 703-308-1146. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.



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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Harry D Wilkins, III  
Examiner  
Art Unit 1742

hdw  
August 28, 2002

ROY KING *R*  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700